

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, cancelling oil and gas lease NM 35862 and rejecting lease offer NM 36427.

Set aside and remanded.

1. Accounts: Payments -- Oil and Gas Leases: Rentals -- Payments:  
Generally

A check is a valid form of remittance for payment of an oil and gas lease filing fee and advance rental. However, it is subject to collection and final payment without cost to the Government. Where a check is returned from a bank as uncollectible, generally, the check cannot be considered as a proper tender of payment.

2. Accounts: Payments -- Oil and Gas Leases: Rentals -- Payments:  
Generally

A check returned from a bank may be considered a tender of payment where the return of the check is shown to have resulted from a confirmed bank error, and the subsequent collection and payment of the check relates back to the time it was originally tendered to BLM. If an oil and gas lease has been cancelled and applications rejected because checks have been returned from a bank and the appellant shows bank error, the case is remanded for further consideration.

APPEARANCES: Paul Ehrlich, Esq., Farber, Raucher, Goldberg, & Ehrlich, New York, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Jose V. Lim appeals from two decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated March 22, 1979, and May 21, 1979, cancelling oil and gas lease NM 35862 and rejecting lease offer NM 36427. Because the reason for BLM's action was the same in each case, we have consolidated the appeals.

Both decisions rested on the fact that the checks submitted by appellant for the first year's rental (NM 35862) and the filing fee (NM 36427) were returned to the State Office by the drawee bank marked "insufficient funds". The checks were for \$185 and \$210 (for 21 cards), respectively.

In his statements of reasons appellant states that the bank erred in returning the checks, apparently due to the transferring of funds from an old account to a new account. The bank, Citibank, N.A., wrote the State Office on April 2, 1979 (NM 35862), and May 29, 1979 (NM 36427), admitting and apologizing for its error. Appellant urges he should not be penalized for the bank's error.

On May 2, 1979, BLM informed the Board that as of that date neither of the checks had been made good. Enclosed was a copy of a notice dated April 20, 1979, to appellant that \$210 was still owed and must be paid before any future simultaneous filings will be accepted. On June 22, 1979, BLM forwarded us a copy of a notice dated May 1, 1979, informing appellant that a check for \$280 which accompanied 28 new drawing entry cards was applied against the \$210 debt and that the \$70 would be refunded after the check cleared the bank. It stated that the 28 new cards were returned with the notice. Apparently, no appeal was taken from this notice.

[1] A check is a valid form of remittance for payment of the filing fee and the advance rental. However, as provided by 43 CFR 1822.1-2(a), a check is accepted "subject to collection and final payment without cost to the Government office." Thus, where a noncompetitive oil and gas lease has been issued to a successful applicant in a drawing of simultaneously filed offers and the lessee's personal check in payment of the first year's rental is returned by the drawee bank, BLM may properly cancel the lease, as there has not been a proper payment timely made. Also, an application may be rejected where the filing fee has not been made because the remittance could not be collected.

[2] There is an exception to the general rule that a check returned from a bank as uncollectible is not a tender of payment. This exception has been recognized by the Department where there is adequate evidence, generally an acknowledgment by the bank, that the bank's refusal to honor the check was the result of a bank error.

Duncan Miller, 16 IBLA 379 (1974). Where the return of the check is shown to have resulted from a confirmed bank error, the subsequent collection and payment of the check relates back to the time that the check was originally tendered to BLM. Pipeline Petroleum Corp., 34 IBLA 73, 85 I.D. 70 (1978). Thus, the payment is held to have been paid within the prescribed time. Donald S. Childs, 19 IBLA 240 (1975). See also, Pauline V. Trigg, 31 IBLA 296 (1977); Gretchen Capital, Ltd., 29 IBLA 247 (1977); Wikoa, Inc., 22 IBLA 6 (1975).

Appellant has made an initial showing that bank error was the cause of the return of the checks. In view of the present state of the record, this case shall be remanded to BLM to determine whether the lease should be reinstated and the application for lease should be allowed under all the circumstances of this case. This would include considering if and when payment of the erroneously dishonored checks has been made, and whether appellant responded to BLM's notices in a timely fashion to warrant equitable relief in this case under the equitable rules stated above.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases remanded to BLM for appropriate action consistent with this opinion.

Joan B. Thompson  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Newton Frishberg  
Chief Administrative Judge

